

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

FREDERICK PENNINGTON
ADC #71305

PLAINTIFF

V.

5:08CV00229 SWW/JTR

GRANT HARRIS, Warden,
Varner Unit, Arkansas Department of Correction, et al.

DEFENDANTS

ORDER

The Court has reviewed the Proposed Findings and Recommended Disposition submitted by United States Magistrate Judge J. Thomas Ray. No objections have been filed.¹ After careful review, the Court concludes that the Proposed Findings and Recommended Disposition should be, and hereby are, approved and adopted in their entirety as this Court's findings in all respects.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Application to Proceed *In Forma Pauperis* (docket entry #1) is DENIED.
2. The Complaint (docket entry #2) is DISMISSED, WITHOUT PREJUDICE, pursuant to the three strikes rule set forth in 28 U.S.C. § 1915(g).
3. If Plaintiff wishes to continue this case, he must, **within thirty (30) days of the entry of this Order**: (a) pay the statutory filing fee of \$350, in full, noting the above case style and number; and (b) file a Motion to Reopen the Case. Upon receipt of the Motion and full payment,

¹ Plaintiff has not filed objections to the Magistrate Judge's Proposed Findings and Recommended Disposition but instead has filed a premature notice of appeal and, in conjunction with that notice, a motion for appointment of counsel [doc.#'s 5-6]. Plaintiff's motion for appointment of counsel is denied as the Court herein certifies that an appeal in this action would not be taken in good faith.

this case will be reopened.

4. The Court CERTIFIES, pursuant to 28 U.S.C. § 1915(a)(3), that an *informa pauperis* appeal from this Order and the accompanying Judgment would not be taken in good faith.

Dated this 5th day of September 2008.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE